File #: 18-0724, **Version:** 1

REPORT TO PLANNING COMMISSION

SUBJECT

Consideration of Useable Open Space in Required Front Yards: Forward a Recommendation to the City Council to Introduce an Ordinance to Amend Section 19.37.100 (Usable Open Space Design Requirements) of Chapter 19.37 (Landscaping, Irrigation and Useable Open Space) and Section 19.12.160 (“O”) of Chapter 19.12 (Definitions) of the Sunnyvale Municipal Code, and Find that the Action is Exempt from CEQA Pursuant to CEQA Guidelines Section 15061(b)(3). (Study Issue)

REPORT IN BRIEF

Since 2005, the Planning Commission has reviewed and approved nine development applications that included a request for a deviation to allow useable open space (UOS) in the required front yard. The Planning Commission sponsored a study issue (Attachment 2) to evaluate the existing UOS regulations and consider amendments that may allow UOS to be provided in the required front yard for multi-family residential development projects.

UOS is a requirement for all duplex and multi-family residential developments, and generally refers to open space that is intended for both active and passive activities. There are specific size and dimension requirements per unit for UOS within a development project. Although UOS may contribute towards the minimum landscaped area of the site, it is not currently allowed within the required front yard of a property.

Staff recommends that the Planning Commission make a recommendation to the City Council to: introduce an ordinance to amend Chapter 19.37 (Landscaping, Irrigation and Useable Open Space) and Section 19.12.160 (“O”) of Chapter 19.12 (Definitions) of the Sunnyvale Municipal Code, and find that the action is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3). The recommendation would eliminate the requirement that prohibits UOS in required front yards for duplex and multi-family residential development projects. Removal of this regulation would provide applicants with clear development criteria for UOS and should not cause negative impacts on surrounding properties.

Although the study issue paper prepared for this item mentions the UOS guidelines for townhome projects, it can also be applied to larger projects. For taller projects (over three stories), it may be prudent to allow less of the setback area to be used for open space requirements because that area may be less attractive to be used by residents and functions more like landscaped area. Also, if a front yard setback deviation or Variance is requested for a project (effectively reducing the area between the front of a building and the property line), that area is even less likely to be available for use by residents and functions more like standard landscaped area. To address taller, high density projects and potential requests to reduce the front setback, staff recommends UOS requirements to be counted for only one-half of the required front setback for buildings over three stories.

The proposed draft ordinance language reflecting the staff recommendation can be found in Attachment 3.

BACKGROUND

When the UOS regulations were first introduced in 1975, the intent was to require developers to provide quality open space that could be used by the residents who live in multi-family residential development in-lieu of the typical single-family back yard space; and, therefore, help improve the quality of life for residents of multifamily developments. UOS has not been allowed (at least for calculation purposes) in the required front yard primarily to create a buffer between public spaces (streets, sidewalks) and the open space on the private residential property. The UOS requirements have not changed significantly since they were adopted, except minimum square footage requirements were added for the various zoning districts, and a requirement for private useable open space was added for High Density Residential (R-4 and R-5) zoning districts.

In 2012, after the Planning Commission had reviewed a development application proposal with a UOS deviation request in which an applicant proposed using the required front yard area to comply the UOS requirement, this study issue was sponsored to consider allowing UOS in the required front yard area under specific criteria and/or modifications to the development standards.

The study issue was ranked in the past several years; however, it “fell below the line” of study issues that the Community Development Department was able to conduct, until 2018.

The City Council is scheduled to consider this item on February 26, 2019.

EXISTING POLICY

Sunnyvale General Plan

Chapter 3: Land Use and Transportation Element

GOAL LT-4: An Attractive Community for Residents and Businesses - In combination with the City’s Community Design Sub-Element, ensure that all areas of the city are attractive and that the city’s image is enhanced by following policies and principles of good urban design while valued elements of the community fabric are preserved.

Policy LT-4.1 Preserve and enhance an attractive community, with a positive image, a sense of place, landscaping, and a human scale.

Policy LT-4.3 Enforce design review guidelines and zoning standards that ensure the mass and scale of new structures are compatible with adjacent structures, and also recognize the City’s vision of the future for transition areas such as neighborhood Village Centers and El Camino Real nodes.

Policy LT-4.4 Avoid monotony and maintain visual interest in newly developing neighborhoods, and promote appropriate architectural diversity and variety. Encourage appropriate variations in lot sizes, setbacks, orientation of homes, and other site features.

Chapter 4: Community Character

Goal CC-2: Attractive Street Environment. Create an attractive street environment which will compliment private and public properties and be comfortable for residents and visitors.

Goal CC-3: Well-Designed Sites and Buildings. Private Development: Ensure that buildings and

related site improvements for private development are well designed and compatible with surrounding properties and districts.

Policy CC-3.2 Ensure site design is compatible with the natural and surrounding built environment.

Chapter 5: Housing Element

Policy HE-4.3 Require new development to build to at least 75 percent of the maximum zoning density, unless an exception is granted by the City Council.

Sunnyvale Municipal Code

Summaries of applicable Municipal Code chapters and sections are provided below. The specific language on the UOS regulations can be found in Attachment 4.

Chapter 19.12 (Definitions)

- Section 19.12.160 ("O"). "Open space, usable" means an outdoor or unenclosed area on the ground, or on a roof, balcony, deck, porch, pool area, patio or terrace or recreation building, when designed and accessible for outdoor living, recreation, pedestrian access or landscaping, but excluding parking facilities, driveways, utility, service or storage areas.

Chapter 19.37 (Landscaping, Irrigation, and Useable Open Space)

- Section 19.37.040 (Minimum Landscaped Area and Usable Open Space).
  This Section provides required minimum size per unit for all types of open space, including UOS, for different zoning districts in the City.
- Section 19.37.100 (Usable Open Space Design Requirements)
  This Section provides design criteria for UOS, which include function, location, minimum dimensions and size to be counted towards the required UOS, as well as private UOS requirements for R-4 and R-5.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Projects that are subject to the requirements of the new regulations will be evaluated pursuant to CEQA on an individual basis.

DISCUSSION

Overview

When the UOS regulations were adopted in 1975, it was uncommon for housing projects to have primary entrances that fronted on the public street. At that time, entrances were usually accessed through common property or parking areas and the street elevation was often less activated. Residential development patterns have changed since the 1970's, and priority has been placed on walkable/active streets. Due to this change in trend, the City has created design guidelines that emphasize activating streetscapes and providing public and private open space, which lends itself to providing primary entrances to residential units along street elevations.

In Sunnyvale, open space includes both the landscaped area and UOS on the property. The landscaped area generally refers to any open area planted with vegetation, usually used for screening or decoration, while UOS refers to open, unenclosed, or recreational areas or buildings used for active and passive open space activities. UOS in a development must meet the minimum size requirements, depending on the zoning district, and have a minimum dimension of 12 feet in any direction.

Currently, UOS is prohibited in required front yards without approval of a deviation in conjunction with a Special Development Permit, or a Variance request in conjunction with a Use Permit or Design Review application. The Planning Commission has approved deviations on development projects to allow UOS in the required front yard, and the common characteristics of those projects are further described below.

A general principle of zoning regulations is to consider code amendments if variances or other deviations in standards are frequently granted. The purpose of this study is to consider creating clear criteria for when UOS would be allowed in a required front yard which in turn would reduce the need for a deviation or Variance requests. The study also considers whether to allow UOS in front yard setbacks of buildings over three stories, and whether to allow UOS that do not meet the minimum standard front setback requirements. As a result of the study, staff is recommending the attached ordinance (Attachment 3) to amend the regulations.

Approved Projects with UOS Deviation
Staff reviewed projects that had approved deviations to allow UOS in the required front yard, and found the following common elements:

- Townhouse-style development projects with 10 or fewer units;
- Located in the Medium Density Residential (R-3) zoning district;
- Project proposed on a corner lot with two required front yards; and
- Parcels that are less than 25,000 square feet in size.

In addition to the projects described above with approved UOS deviations, some multi-family residential developments in the higher density zoning districts (R-4 or R-5) have submitted applications with requests to reduce the minimum UOS requirement per unit; however, these requests have been approved as concessions, in accordance with the State Density Bonus laws, and not with a deviation.

Applications with requests for deviations from the UOS allowances in the required front yard have been submitted for higher density properties, but most of those projects were modified prior to Planning Commission consideration of the application. In those cases, because the lots are usually larger, staff has encouraged the applicant to shift the building/s, and the deviation has been avoided with redesign of the site plan.

Other Jurisdictions
In addition to the research staff conducted on Sunnyvale projects, research was also conducted with nearby jurisdictions to understand if, and how, UOS is regulated. Staff found that both Palo Alto and Redwood City have UOS requirements for multi-family residential zoning districts. Redwood City prohibits UOS in required front yards, similar to Sunnyvale, while Palo Alto has more categorized UOS requirements, including the total UOS, common useable space, and private UOS for residential

developments. Additionally, Palo Alto has specific design criteria for UOS, similar to Sunnyvale, but includes no locational prohibitions. Other cities, Mountain View and Santa Clara, have general open space requirements, but do not specifically require UOS. A comparison of the nearby jurisdictions open space requirements can be found in Attachment 6.

Options

There are several options that can be considered to address this issue. Most address the original concern regarding how the UOS requirements relate to townhome projects, specifically those with two street frontages. But Sunnyvale is experiencing more high-density projects at taller heights, and the UOS standards are also important to consider for these projects. Below are different options to consider:

In addition to making no changes to the regulations, staff considered a number of permutations based on: zoning district, number of units, size of lot, frontage length, location (corner vs. mid-block), whether a project meets minimum setback, and, what portion of the UOS or setback area could be located in a setback area. The following paragraphs provide brief comments on each of these permutations.

A. Make no changes

This option would not change any of the current regulations or practices for UOS. Development applications would have UOS deviation requests considered on a case-by-case basis. The deviation request to allow UOS in required front yards has lessened and is not very common, and on most lots the UOS requirements can be achieved as currently regulated. The current deviation process allows the Planning Commission flexibility in considering deviation requests. The downside of this approach is that it does not provide applicants with clear guidance whether a project design meets the community expectations (through decisions of the Planning Commission or Council) until the public hearing for the project.

B. Allow UOS in required front yards in multi-family residentially-zoned areas (R-2, R-3, R-4, and R-5).

This option would eliminate the need for the deviation or Variance and authorizes the use of the required front setback (yard) as UOS, provided the area meets all the other dimensional requirements for UOS. This change would allow projects in multi-family residential developments to utilize the space between the residential building and the street, and could help to activate the streetscape. Active UOS uses such as play equipment (vs. passive uses such as seating, strolling) could be perceived by the public as cluttered and less safe for users. If useable open space is provided within the front yard setback there will be less and potentially smaller useable open space areas on the interior of a development. Under the current regulations UOS can be located between the building and the street, provided the UOS is behind the minimum setback.

If this option is chosen, staff recommends pairing it with additional options such as only a portion of the required front yard, smaller projects or corner projects.

C. Do not allow UOS in front yard setback areas that do not meet minimum setback

A drawback to allowing the UOS in the front setback area is when a request to reduce the front yard setback is included in the project. In cases where a deviation or variance request is included as part of the project, it is less likely that the front area is appropriate for UOS. The reduced setback tends to function less as useable open space and more as landscaping only.

powered by Legistar™

D. Allow UOS in the required front yard only in the R-3 zoning district.
As shown in Attachment 5, the deviation approvals have been for projects in the R-3 zoning district, which tend to be smaller in size than R-4 or R-5 project sites and are usually developed with a townhouse style development that are 2-3 stories in height. This medium density development style lends itself to providing UOS on the ground level, typically in a back (or front) yard setting, like a single-family house. Additionally, because higher density development projects are typically built on larger sites, there is more room to design a project, and to comply with the UOS requirements. R-4 (high density) projects have a requirement for private useable open space which is typically satisfied with balconies on upper stories. To date, the Planning Commission (or City Council) have not considered requests for UOS in the front yard setback areas on R-4 and R-5 projects; however, these zoning districts are now seeing more applications. Limiting the change to R-3 projects would be consistent to past requests and could be seen to ensure that a balance of UOS and landscape buffer is provided.

E. UOS for projects higher density multi-family residential districts
Projects in R-4 and R-5 zoning areas which exceed three stories in height have an increased front yard setback requirement (i.e., additional setback is at least half of the building height above three stories). Including R-4 and R-5 zoning designations in the UOS amendments would allow the increased setback area to be used as UOS, provided there is no reduction in the required front yard setback.

F. Allow UOS in front yard setbacks for fewer than 10 units
Multifamily residential development projects with ten or more units are eligible for the State Density Bonus program, and can request a reduction of the minimum UOS requirements as a concession. However, residential development projects with fewer than ten units are not eligible for the State Density Bonus; and may have challenges meeting the UOS requirements and other provisions (including minimum density) without requesting the deviation. As shown in Attachment 5, past projects that have been granted the UOS deviation were development projects with fewer than ten units; another common trait seen in the UOS deviation approvals.

G. Allow UOS in the required front yards only on corner lots
Corner lots generally have constraints because they have two required front yards and are required to meet the minimum density requirement of at least 75% of the maximum density. As shown in Attachment 5, this is a common factor of those projects in which the UOS deviation has been allowed. This option does not differentiate between large or small properties; the previously approved deviations were all smaller developments.

H. Allow up to 50% of the required front yard to be used as UOS.
This option would pair with the ability to use the required front setback for UOS with restriction that only half (50%) of the area can be designated as useable open space. Limiting use of the front setback (for UOS) is similar to the existing rear yard regulations that allow structures closer to the rear property line subject to a limitation that no more than 25% of the required rear yard area is used. This approach provides applicants and decision-makers additional flexibility in designing projects and preserves a portion of the front setback area for less active/useable features.

Conclusion
Staff considered several items that led to the options as part of this study, including:

- Evaluation of existing regulations;
- Examination of the common patterns of past projects with UOS deviation approvals;
- Current development projects;
- Public input from residents and developers;
- Potential impacts that could arise from modifications to the current regulations; and
- Information from nearby jurisdictions on how open space is regulated.

Staff supports allowing UOS in the required front yard setback for the medium, high and very high density multi-family residential areas (R-3, R-4 and R-5), subject to some restrictions, described below. The change would provide flexibility to project design and give all parties an opportunity to provide superior design in exchange for activating street frontages. Staff does not, however, support code modifications allowing UOS in the required front yard setback if there is a requested variance or deviation from minimum setback. Combining a reduced setback with allowing UOS in that area removes landscape buffer areas to the front of projects.

Staff recommends the following alternative:
Amend the zoning code to allow UOS in the front yard setback to be allowed as follows:

- Applies to medium, high and very high density multi-family residential zoning districts (R-3, R-4 and R-5);
- Up to 50% of the required front yard may be counted toward the UOS requirement; and
- UOS would not be a permitted use for a project with a front yard setback deviation or Variance.

Other options can be considered to further restrict when the UOS in the front yard setback area, such as restricting it to only R-3-zoned properties, limit to three story and lower projects, limit to fewer than 10 unit projects, or for corner lots only; staff has determined expanding the regulations to all multi-family residential zoning districts along with the exclusion of allowing the use of UOS in those areas in conjunction with a front yard setback deviation or Variance will limit the inappropriate use of the regulation.

FISCAL IMPACT

The proposed amendments to the Sunnyvale Municipal Code associated with useable open space requirements would have no fiscal impacts.

PUBLIC CONTACT

Public contact regarding this item was made through the following ways:

1. Posting the Agenda for Planning Commission on the City's official notice bulletin board outside City Hall and by making the agenda and report available at the Sunnyvale Public Library and on the City's website;
2. Publication in the *Sun* newspaper, at least 10 days prior to the hearing;
3. E-mail notification of the hearing dates sent to all interested parties and neighborhood associations; and
4. Two community outreach meetings held to discuss the study issue on August 3, 2018 and August 6, 2018.

Staff has not received any comments from the public, beyond those discussed at the outreach meetings, at the time of report publication. An overview of the outreach meeting discussion is

provided below.

Planning Commission Study Session
A study session with the Planning Commission was held on July 23, 2018, six Planning Commissioners were in attendance.

The Planning Commission had the following comments on the study issue:

- That flexibility is preferred when considering projects with UOS deviation requests because each project has different circumstances that may or may not warrant the deviation;
- That the deviation may be most appropriate for small corner lots, due to the two required front yards, and design constraints;
- If UOS is allowed in the required front yard, it should be counted towards the common UOS and not the private UOS;
- Concern was raised that by allowing UOS in the required front yard a project may be pushed towards the back of the site and closer to adjacent development; and
- Allowing UOS in the required front yard may result in reduced open space and landscaped area within a development project.

Community Outreach Meetings
Staff conducted two community outreach meetings on August 3, 2018 in the morning and August 6, 2018 in the evening. A total of four people attended the meetings, two from the development community and two community members.

The community members expressed concerns that allowing active UOS in the required front yard could create safety concerns for drivers. They also felt that the required front yard currently creates a buffer between the public right-of-way and the development project and worried that UOS in that area may not be as aesthetically pleasing. One of the attendees, representing the development community, requested that if the standards were to be modified, they would like to see clear and easy to understand standards to avoid uncertainties. This attendee also remarked that they would like to see UOS allowed in the required front yard.

ALTERNATIVES

1. Introduce an Ordinance to Amend Chapter 19.37 (Landscaping, Irrigation and Useable Open Space), including but not limited to (a) Medium, high and very high density multi-family residential zoning districts (R-3, R-4 and R-5), (b) Up to 50% of the required front yard may be counted toward the useable open space requirement, (c) Useable open space in the required front yard would not be a permitted use for a project with a front yard setback deviation or Variance, and Section 19.12.160 (“O”) of Chapter 19.12 (Definitions) of the Sunnyvale Municipal Code (Attachment 3 to this report), and Find that the Action is Exempt from CEQA Pursuant to CEQA Guidelines Section 15061(b)(3) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.
2. Introduce an Ordinance with modifications to the staff recommendation, and Find that the Action is Exempt from CEQA Pursuant to CEQA Guidelines Section 15061(b)(3) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.
3. Do not introduce an Ordinance and make no changes to the current standards of practice for

UOS requirements.

STAFF RECOMMENDATION

Recommend to City Council Alternative 1: Introduce an Ordinance to Amend Chapter 19.37 (Landscaping, Irrigation and Useable Open Space), including but not limited to (a) Medium, high and very high density multi-family residential zoning districts (R-3, R-4 and R-5), (b) Up to 50% of the required front yard may be counted toward the useable open space requirement, (c) Useable open space in the required front yard would not be a permitted use for a project with a front yard setback deviation or Variance, and Section 19.12.160 (“O”) of Chapter 19.12 (Definitions) of the Sunnyvale Municipal Code (Attachment 3 to this report), and Find that the Action is Exempt from CEQA Pursuant to CEQA Guidelines Section 15061(b)(3) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Staff recommends amending the requirement that prohibits front yard area to be counted towards the UOS requirement. The staff recommendation provides criteria on when to allow UOS in the required front yard in specified multi-family residential zoning districts (unless provided for through an area plan, such as Downtown Specific Plan). The new regulations would simplify the permitting process by eliminating the needs for deviations and additional calculations and provide clarity on when useable open space is appropriate in this area of the site.

Additionally, the staff recommendation would not adversely impact the City's efforts to maintain and preserve good street environment for residential neighborhoods, and would continue to provide adequate amenities for residents. The elimination of the location requirement that prohibits UOS in the required front yard would also ease the challenges in meeting minimum density requirements (especially for smaller projects).

Staff is not concerned that allowing UOS in the required front yard would result in a development being “pushed back” on a property, or sited closer to adjacent buildings than currently allowed because the project would still have to comply with other applicable development standards, including the minimum setback requirements.

Prepared by: Kelly Cha, Associate Planner
Reviewed by: Amber Blizinski, Principal Planner
Reviewed by: Andrew Miner, Assistant Director, Community Development
Reviewed by: Trudi Ryan, Director, Community Development
Reviewed by: Teri Silva, Assistant City Manager
Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Reserved for Report to Council
2. Study Issue Paper
3. Draft Ordinance
4. UOS Regulations from the Sunnyvale Municipal Code
5. Summary Table of Approved Projects with a UOS Deviation
6. Open Space and UOS Regulations from other Jurisdictions